HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 13/2004

Rajnesh Kumar ……Revisionist

Vs.

State of Uttaranchal and other …….Respondents

Hon'ble Irshad Hussain, J.

Heard Sri Sandeep Tandon learned counsel for the revisionist and Sri Arvind Vashisht in brief of Sri Yogesh Pandey learned counsel for the respondent no.2. Perused the record.

This is a criminal revision under Section 397/401 of the Code of Criminal Procedure (for short 'Code') read with section 19(4) of the Family Courts Act has been preferred against the impugned order 24.11.2003 passed by the Principal Judge, Family Court, Dehradun allowing the application for interim maintenance thereby directing the revisionist-husband to pay Rs. 3000/- per month as interim maintenance w.e.f. 17.10.2003-the dated of the presentation of the petition by the wife under section 125 of the Code. On perusal of the record, it is evident that the revisionist-husband has sought time to file objections against the application for interim maintenance. However, the Principal Judge did not give the opportunity to file objections to the revisionist-husband and straightaway passed the impugned order. There can be no doubt that the opportunity of opposing the same had been denied and although the revisionist was legally required to be given sufficient time to file objections against the application for interim maintenance. Considering these aspects, the impugned order cannot legally be sustained.

For the above reasons, the impugned order dated 24.11.2003 is set-aside and the Principal Judge, Family Court, Dehradun is directed to decide the application afresh after a reasonable opportunity to the revisionist-husband to file objections against the interim maintenance. Meanwhile, it is also directed that the revisionist-husband shall continue to pay Rs. 1500/- per month as interim maintenance till the disposal of the application on merit. The Principal Judge, Family Court shall not be guided by the amount fixed as interim maintenance by this court while deciding the application on merit. The petition is finally disposed of.

(Irshad Hussain, J.)

Date 22.4.2004

Rawat